



# Guidance on Facilitating LEA Requests for Effective Tribal Consultation

Compiled and Prepared

by

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***“Let us put our minds together and see what life we can make for our children.”  
Sitting Bull***

## **Guidance on Facilitating LEA Requests for Effective Tribal Consultation**

### Purpose:

The Tribal Relations and Resiliency Unit (TRRU) was developed to build relationships and understandings within the Office of Public Instruction (OPI) and Montana school districts to incorporate Tribal voice, share resources and build connections through consultation on matters affecting American Indian students. Consultation, as defined within the ESSA requirements, will work to create these opportunities for school districts and tribal leaders to work collaboratively for the benefit of our youth.

We have compiled the following best practices document and recommendations with the intent of providing interagency staff responsible for managing covered federal/state programs Guidance on Facilitating Local Education Agency (LEA) Requests for Effective Tribal Consultation.

As drafted by the US Department of Education bulletin dated September 2016, under ESSA Section 8538, consultation is intended to create opportunities for Local Education Agencies (LEAs) and tribal leaders to work together on behalf of American Indian and Alaska Native students. The consultation process allows affected LEAs to gather input from Indian tribes and tribal organizations, to encourage relationships and collaboration that is a critical part of improving academic outcomes.

### Background:

The consultation requirements outlined under section 8538 of the ESEA (reauthorized as ESSA) requires affected local educational agencies (LEAs) to consult with Indian tribes, or those tribal organizations approved by the tribes located in the area served by the LEA, prior to submitting a plan or application for covered programs. This requirement is designed *“to ensure timely and meaningful consultation on issues affecting American Indian and Alaska Native students.”* The consultation must be done *“in a manner and in such time that provides the opportunity for such appropriate officials from Indian tribes or tribal organizations to meaningfully and substantively contribute to plans under covered programs”*.

An affected LEA is defined within the ESSA requirements, as a school district or system that have either fifty percent (50%) or more of its student enrollment

made up of AI/AN students; or received an Indian education formula grant under Title VI of the ESEA, as amended by the ESSA, in the previous fiscal year that exceeded \$40,000, and which also educate American Indian/Alaska Native (AI/AN) students. Affected LEA's who meet these criteria are required to consult with local Indian tribes or tribal organizations prior to submitting a plan or application under covered ESEA (ESSA) formula grant programs.

#### Which Covered Programs Require Consultation:

The following is a list of current programs which require an affected LEA to consult with Indian tribes or tribal organizations prior to submitting either a plan or application for covered programs.

- Title I, Part A (Improving Basic Programs Operated by State and Local Educational Agencies)
- Title I, Part C (Education of Migratory Children)
- Title I, Part D (Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At-Risk)
- Title II, Part A (Supporting Effective Instruction)
- Title III, Part A (English Language Acquisition, Language Enhancement, and Academic Achievement Act)
- Title IV, Part A (Student Support and Academic Enrichment Grants)
- Title IV, Part B (21st Century Community Learning Centers)
- Title V, Part B, subpart 2 (Rural and Low-Income School Program)
- Title VI, Part A, subpart 1 (Indian Education Formula Grants to Local Educational Agencies)

#### Scheduling and Sequencing of Tribal Consultation under ESSA Section 8538:

Affected LEAs should conduct their consultation in advance of making significant decisions regarding plans or applications for covered programs, to ensure an *“opportunity for . . . appropriate officials from Indian tribes or tribal organizations to meaningfully and substantively contribute”* to an LEA's plan (section 8538(a)).

The timeline for each consultation is dictated by requirements of the relevant formula grant program, which have different application deadlines. Given that tribes may receive multiple requests for consultation, LEAs are encouraged to consider arranging for informational meetings with Indian tribes or tribal

organizations in advance of the actual, formal consultation taking place. Facilitation of these, informal information gathering sessions should be arranged with the assistance of the SEA, and, through services provided by the Tribal Relations and Resiliency Unit working directly with the Tribal, Family and Community Liaison.

### Meaningful Consultation:

In order to ensure that consultation is meaningful, a respectful relationship is essential. Education and understandings of SEAs, LEAs and Tribal Nations can ease misconceptions and build trust. Mutually valued protocol and procedure can provide positive experiences for our students, districts, tribe and state.

We will assist LEAs in the opportunity to receive timely input and feedback in collaboration with the Tribes on plans pertaining to ESSA covered programs. We will work with the Tribal nations, or those tribal organizations approved by the tribes located in the area served by the LEA to create opportunities for input, resource sharing and support for students.

We will support LEA's on issues or questions on which the LEA seeks tribal input, or support to draft plans, in advance of the actual consultation. As LEA's are mandated to initiate consultation prior to making a final decision on significant and substantive issues related to the content of the covered program plans, we can assist LEA's in providing written responses to all tribal input received during consultation to explain how tribal input was considered, and incorporated into the final application and plan.

### Required Consultation Documentation Under ESSA Section 8538:

Under this section, each LEA must maintain in their records, for all State-administered ESEA programs, copies of documentation in the form of a current, written affirmation signed and dated by the appropriate officials of the participating tribes (or tribal organizations approved by the tribes), demonstrating that the required consultation has occurred. If tribal officials do not provide such affirmation within a reasonable period, the LEA must forward to the SEA documentation confirming that consultation has taken place.

### LEA Demonstration of Effective Tribal Consultation:

Documentation supporting the affected LEA's assertion that effective consultation has been completed between the LEA, tribe or tribal organization may include any of the following:

- A letter, memo, or email from the American Indian nation(s) and tribal communities or tribal organizations approved by the nations located in the area served by the LEA stating meaningful consultation occurred.
- A formal agreement or memorandum of understanding (MOU) between the entities describing their collaboration to support students who are American Indian.
- A work plan developed by the LEA and the American Indian nation(s) and tribal communities or tribal organizations approved by the nations located in the area served by the LEA to develop a formal agreement or MOU between the entities.
- ESSA LEA Plan consultation meeting minutes.

### Combining Consultation in Conjunction with Required Tribal/Parent Involvement:

LEA's may coordinate or consolidate the required ESEA consultation with the parent activities required under the Indian Education formula grant program, the Impact Aid program, and the Johnson O'Malley program. An LEA may only do so, however, if the activity in question – i.e., the consultation – meets all of the requirements of each program. For example, an LEA may plan a public hearing or meeting with its local tribe regarding its education program generally in order to meet the Impact Aid requirements for Indian Policies and Procedures; that hearing with the tribe could incorporate the elements of the LEA's proposed plans under the covered programs, rather than hold a separate consultation event. The LEA can involve the local tribe or tribes in planning the best approach that satisfies the needs of the tribe(s) and the LEA in a time-effective manner, meeting the requirements of the various programs.

### Determining the Necessity of Separate or Collective Consultation:

Where there are multiple tribes and a single LEA, the LEA may hold a consolidated consultation that includes all affected local tribes. Similarly, where there are multiple LEAs and one tribe, there is no federal prohibition against a joint

consultation held by several LEAs. In both cases the LEA must ensure that the tribe or tribes have a meaningful and timely opportunity to give input into an LEA's plans or applications.

Agency Facilitation in Accordance with ESSA Section 8538 Requirements:

To ensure all conditions outlined under ESSA Section 8538 (Tribal Consultation with LEA,s) are satisfied and that the OPI, as the SEA identified within ESSA, remains in alignment with stated requirements, the Tribal Relations & Resiliency Unit encourage agency level staff and personnel to observe the following recommended protocols in advising and supporting affected LEA's with respect to the best practices to be followed.

In order to facilitate the process of tribal consultation with OPI agency staff assisting LEA's, working in conjunction with the OPI Tribal Relations and Resiliency Unit and Director, who's primary responsibility as a liaison is to provide leadership, direction, facilitation and coordination with key stakeholders for K-12 programs related to Indian education and American Indian student achievement, we have developed a written request (see attached format) which can be submitted to the Tribal Relations and Resiliency Unit Director for review and guidance.

Once the request has been submitted by the LEA, working with and through the SEA for review by the Tribal Relations and Resiliency Unit, the following actions will be initiated:

- Unit Director/Liaison will acknowledge receipt of the request
- A reasonable period should be allowed following the submission of the initial request from the LEA for receipt of a response from the Unit Director
- Unit Director/Liaison will identify the appropriate tribal staff, department or tribal organization that is authorized to participate in the consultation process and initiate contact with the appropriate tribe, or tribal organization, along with providing that contact information to the LEA
- Unit Director/Liaison will facilitate the LEA's request for both an informal or informational conversation with the appropriate tribal staff, department or tribal organization, along with providing additional direction on the next

steps for both LEA's and tribes or tribal organizations with the intent of facilitating the formal consultation process

- Unit Director/Liaison will work directly with both the LEA and tribe or tribal organization to complete an effective and meaningful formal consultation process to benefit students and advance relationships where needed
- When consultation is complete, the LEA can provide confirmation through supporting documentation to the Unit Director/Liaison, tribe or tribal organization, identifying the outcomes of the consultation process including specific components of the covered program plan that reflect the recommendations provided through the tribal consultation process

As a team within OPI, we can provide LEA's and Tribal Nations the appropriate guidance and support required by ESSA. We will build a collaborative foundation to consistently schedule consultation on an annual basis with hopes to better relationships, share resources and support services for the betterment of the American Indian students. When schools and communities work together, students benefit.



**Request to Initiate Tribal Consultation in Compliance with ESSA Section 8538**

LEA: \_\_\_\_\_

Name & Title: \_\_\_\_\_

Affected Program(s): \_\_\_\_\_

Tribal Community or Organization(s): \_\_\_\_\_

OPI Department, Unit or Office (SEA): \_\_\_\_\_

Date: \_\_\_\_\_

**Description of Consultation Sought:**

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This request affirms that the interagency unit, department or office staff and/or personnel identified herein have assisted the affected LEA with the submission of a formal request to the Director of the OPI Tribal Relations and Resiliency Unit in compliance with the requirements for tribal consultation, as set forth under Section 8538 of the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the Every Student Succeeds Act ESSA, to initiate the required consultation process between the tribe, tribal organization and affected LEA.

Date Received: \_\_\_\_\_